

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

T-Mobile USA, Inc.

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File No. EB-07-SE-237
NAL/Acct No. 200832100025
FRN No. 0001565449

ORDER

Adopted: March 26, 2008

Released: March 28, 2008

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and T-Mobile USA, Inc. (“T-Mobile”). The Consent Decree terminates an investigation by the Bureau against T-Mobile for possible violations of Part 4 of the Commission’s rules regarding the reporting of network outages.¹

2. The Bureau and T-Mobile have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to these matters, we conclude that no substantial or material questions of fact exist with respect to this matter as to whether T-Mobile possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,² and sections 0.111 and 0.311 of the Commission’s Rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that T-Mobile shall make its voluntary contribution to the United States Treasury, as specified in the Consent Decree, by mailing a check or similar instrument payable to the order of the Federal Communications Commission, to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO

¹ 47 C.F.R. § 4.1 *et seq.*

² 47 U.S.C. § 154(i).

³ 47 C.F.R. §§ 0.111 and 0.311.

63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A and enter the letters "FORF" in block number 24A (payment type code).

8. **IT IS FURTHER ORDERED** that T-Mobile will file reports with the Commission twelve (12) months and twenty-four (24) months after the Effective Date. Each report shall include an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of T-Mobile with personal knowledge of the representations therein, verifying that T-Mobile has complied with the terms of this Consent Decree. All reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

9. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Thomas J. Sugrue, Vice President, Government Affairs, T-Mobile USA, Inc., 401 9th Street, NW, Suite 550, Washington, D.C. 20004, and its Counsel, David H. Solomon, Wilkinson Barker Knauer LLP, 2300 N Street, NW, Suite 700, Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-07-SE-237
)	
)	NAL/Acct. No. 200832100025
T-Mobile USA, Inc.)	
)	FRN No. 0001565449

CONSENT DECREE

1. The Enforcement Bureau (the “Bureau”) and T-Mobile, USA, Inc. (“T-Mobile), by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s Investigation into T-Mobile’s compliance with the Commission’s regulations in 47 C.F.R. Part 4 regarding the reporting of network outages.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*
 - (b) “Adopting Order” or “Order” means an order of the Bureau adopting this Consent Decree.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” or “FCC” means the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Effective Date” means the date on which the Bureau releases the Order.
 - (f) “Investigation” means the investigation initiated by the Bureau’s August 6, 2007 Letter of Inquiry¹ regarding T-Mobile’s compliance with the Commission’s regulations in Part 4 of its Rules regarding the reporting of network outages through the Effective Date.
 - (g) “Parties” means T-Mobile and the Bureau.
 - (h) “Rules” means the Commission’s regulations set forth in Title 47 of the Code of Federal Regulations.
 - (i) “T-Mobile” means T-Mobile USA, Inc., and its predecessors-in-interest and successors-in-interest.

¹ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Kathleen O’Brien Ham, T-Mobile USA, Inc. (Aug. 6, 2007).

II. BACKGROUND

3. Pursuant to Part 4 of the Rules, a wireless communications provider is required to submit to the Commission an electronic Notification within 120 minutes after discovering that it has experienced a network outage of at least 30 minutes duration: (1) of a Mobile Switching Center; (2) that potentially affects at least 900,000 user minutes of either telephony and associated data (2nd generation or lower) service or paging service; (3) that affects at least 1,350 DS3 minutes; (3) that potentially affects any special offices and facilities, as defined by the Rules; or (4) that potentially affects a 911 special facility, as defined by the Rules. 47 C.F.R. §§ 4.5, 4.9(e). Within 72 hours after discovering such an outage, a wireless communications provider is required to submit electronically an Initial Communications Outage Report. 47 C.F.R. § 4.9(e).

4. T-Mobile is a wireless communications provider and is subject to the network outage reporting regulations in Part 4 of the Commission's Rules.

5. On August 6, 2007, the Bureau issued a Letter of Inquiry ("LOI") initiating an investigation regarding T-Mobile's outage reporting procedures and T-Mobile's compliance with the Commission's outage reporting rules.² On September 5, 2007, T-Mobile submitted a response to the LOI.³

III. TERMS OF AGREEMENT

6. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to, and are contingent upon, final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

7. **Jurisdiction.** T-Mobile agrees that the Bureau has jurisdiction over it and the subject matter contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

8. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other final order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission order.

9. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation without any finding of liability on the part of T-Mobile. In consideration for the termination of said Investigation and in accordance with the terms of this Consent Decree, T-Mobile agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not institute, on its own motion or in response to third-party objection, or refer to the Commission, any new proceeding, formal or informal, or take or refer to the Commission any action on its own motion against T-Mobile for possible past violations of Part 4 of the Commission's rules regarding the reporting of network outages prior to the Effective Date. The Bureau also agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, or refer to the Commission, any new proceeding, formal or informal, or take on its own motion, or refer to the Commission, any action against T-Mobile for possible violations of Part 4 of the

² *Id.*

³ Letter from David H. Solomon, Esq., Wilkinson Barker Knauer, LLP, to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau (Sept. 5, 2007).

Commission's rules regarding the reporting of network outages prior to the Effective Date. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion, or refer to the Commission, any proceeding, formal or informal, or take on its own motion, or refer to the Commission, any action, against T-Mobile with respect to T-Mobile's basic qualifications, including its character qualifications, to be a Commission licensee.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, T-Mobile agrees that it will develop, within thirty (30) calendar days from the Effective Date, an internal Compliance Plan to ensure T-Mobile's future compliance with the Commission's regulations in Part 4 of its Rules regarding the reporting of disruptions to communications. The Compliance Plan will include, at a minimum, the following components:

- (a) **Compliance Training Program.** T-Mobile shall establish and maintain an FCC outage reporting training program, as detailed below, for all employees who are responsible for gathering and/or analyzing information regarding T-Mobile's network outages, entering that information into any T-Mobile database(s) and/or record(s) that forms the basis of T-Mobile's reporting of network outages to the Commission, or compiling and/or submitting T-Mobile's outage reports to the Commission.⁴
- i. T-Mobile's Compliance Training Program shall address, at a minimum, the FCC's Rules governing the reporting of network outages, the information and calculations necessary to determine whether an outage is reportable under the FCC's Rules, and the time periods during which notifications and reports of reportable outages must be submitted to the FCC. T-Mobile's Compliance Training Program shall also address the methods and procedures adopted by T-Mobile to identify and report those network outages that satisfy the FCC's reporting criteria in order to ensure compliance with the FCC's outage reporting Rules. The training program shall also include information on the potential internal and regulatory consequences of failing to comply with T-Mobile's methods and procedures and/or the FCC's outage reporting requirements.
 - ii. T-Mobile shall provide the foregoing outage reporting training within six months of the Effective Date and will update the training at least annually for all of its employees who are responsible for gathering and/or analyzing information regarding T-Mobile's network outages, entering that information into any T-Mobile database(s) and/or record(s) that forms the basis of T-Mobile's reporting of network outages to the Commission, or compiling and/or submitting T-Mobile's outage reports to the Commission. T-Mobile will also provide training to new employees responsible for these activities.
 - iii. T-Mobile shall update and enhance the foregoing training regarding the FCC's outage reporting requirements as appropriate and necessary.
- (b) **Annual Report.** Twelve (12) months and twenty-four (24) months after the Effective Date, T-Mobile shall submit an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of T-Mobile with personal knowledge of the representations therein, verifying that T-Mobile has complied with the terms of this Consent Decree. The affidavit or declaration shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement

⁴ Under this provision, T-Mobile will not be required to provide outage reporting compliance training to employees whose responsibilities do not include gathering, analysis, or data entry of information regarding T-Mobile's network outages or compiling T-Mobile's outage reports, or whose involvement in T-Mobile's outage reporting activities is limited to performing job functions that are not specific to outage reporting under the Commission's Rules.

Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The affidavit or declaration must comply with Section 1.16 of the Commission's rules, 47 C.F.R. § 1.16, and be substantially in the form set forth therein.

- (c) **Termination.** The provisions of this paragraph shall remain in effect for two (2) years from the Effective Date.

11. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating any formal or informal complaint filed against T-Mobile pursuant to Section 208 of the Act, 47 U.S.C. § 208, and to take action in response to such formal complaint. If any such complaint is made, the adjudication of that complaint will be based solely on the record developed in that proceeding and the Commission shall not use any facts developed through the Investigation in any such proceeding. Except as expressly provided in this Consent Decree, nothing herein shall prevent the Commission or its delegated authority from investigating T-Mobile's compliance with the Act, the Commission's rules, or this Consent Decree.

12. **Voluntary Contribution.** T-Mobile agrees that it will make a voluntary contribution to the United States Treasury, in the amount of two hundred fifty thousand dollars (\$250,000). The payment will be made within thirty (30) days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

13. **Waivers.** T-Mobile waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Bureau issues an Order adopting the Consent Decree without change, addition, modification, or deletion. T-Mobile shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither T-Mobile nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and T-Mobile shall waive any statutory right to a trial *de novo* regarding the terms or validity of the Consent Decree. T-Mobile, however, may present evidence that it has not violated the Consent Decree. In addition, nothing in this Consent Decree shall preclude T-Mobile from petitioning the Commission for relief as to future obligations under Part 4 of the Commission's Rules. T-Mobile hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

14. **Invalidity.** In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

15. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which T-Mobile does not consent), that provision will be superseded by such Commission Rule or Order.

16. **Successors and Assigns.** T-Mobile agrees that the provisions of this Consent decree shall be binding on its successors, assigns, and transferees.

17. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, T-Mobile does not admit or deny noncompliance, violation or liability for violating the Act or the Rules in connection with the matters that are the subject of this Consent Decree.

18. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

19. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

20. **Authorized Representatives.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

21. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Kris Anne Monteith
Chief
Enforcement Bureau

Date

Thomas J. Sugrue
Vice President, Government Affairs
T-Mobile USA, Inc.

Date